

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63RD FLOOR
NEW YORK, NEW YORK 10118
TEL (212) 763-0883 | FAX (212) 564-0883
WWW.KAPLANHECKER.COM

DIRECT DIAL 212.763.0889

DIRECT EMAIL shecker@kaplanhecker.com

November 3, 2021

BY ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

*Re: Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al., No. 19
Civ. 660 (MKB)*

Dear Chief Judge Brodie:

We write on behalf of the Federal Defenders to provide an update pursuant to the Court's order dated November 1, 2021.

In-person visiting. We continue to have concerns about the wait times that attorneys visiting the MDC regularly face. The government has thus far resisted our suggestion that the facility have front desk staff call for clients to be brought down, rather than wait until attorneys have been processed and have arrived at the visiting room before the housing unit is notified that a client has a legal visit. The government has also resisted the implementation of a time-stamp system to track and identify the source of delays. As discussed previously, until both sides have a shared understanding of the facts, there will be limits to how much troubleshooting the parties can do to address this longstanding issue. *See* Doc. No. 235 at 1.

We do understand that the MDC has added staff to the front desk and visiting rooms, and we are hopeful that that results in sustained improvements. But our staffing concerns remain. We shared with Your Honor two weeks ago the experience of a CJA attorney who, after waiting for more than an hour to see her client in the West building, had to leave without seeing the client and go to the East building for a scheduled visit; once there, she discovered that there was no staff in the East visitors' waiting area and had to return to the West building. *See* Doc. No. 243 at 1. We learned of a similar incident last week, when an attorney from the Federal Defenders went to the East building to see a client. That attorney found the doors to the East building locked and a sign directing attorneys to go to the West building. When the attorney got to the West building, however, the officers informed him that he had to return to the East building. The attorney pleaded for the West front desk staff to call Legal or the Warden. After a few phone calls, he was directed

back to the East side, where the officer working the front desk wanted to know if he was the attorney “complaining” about her not being there.

It is not yet clear how the impending implementation of the federal vaccination mandate will affect staffing. The MDC has reported to the Court that, as of yesterday, 239 staff members had been vaccinated, although “some [vaccinated] staff members” may not be reflected in that count because they “received the vaccine [from] an outside medical facility.” Letter from Warden F. Martinez to Hon. Margo K. Brodie (Nov. 2, 2021). That reflects a troublingly low vaccination rate. For reference, the Department of Justice reported in November 2020 that the MDC had approximately 460 staff members total. Office of Inspector General, Pandemic Response Report 21-002, Remote Inspection of Metropolitan Detention Center Brooklyn at iii (Nov. 2020), <https://oig.justice.gov/sites/default/files/reports/21-002.pdf>.

Equally troubling is our understanding that the MDC will continue to permit unvaccinated officers to come to work once the mandate takes effect while the disciplinary process for unvaccinated officers runs its course. We do not yet know whether the unvaccinated officers, potentially numbering in the hundreds, will be allowed to interact with inmates and visitors. Given that we first raised this concern almost a month ago, *see* Doc. No. 235 at 2, we are disappointed that such questions remain.

Finally, we continue to receive reports of officers who do not comply with masking requirements. During one visit this week, for example, Ms. von Dornum had her temperature taken and COVID screening done by an unmasked officer; another officer on the visitors’ side of the lobby engaged in conversation without a mask on for at least ten minutes; and another officer entered Ms. von Dornum’s attorney-client visiting room without a mask on either. Such non-compliance puts the safety of inmates and visitors at risk, and stands in the way of the shared goal of more robust in-person visiting. Because the facility has been unable to ensure compliance after months of reported disciplinary efforts, we do not expect that the on-paper vaccination mandate will do much to increase the comfort level of attorneys who are fearful about visiting the MDC in person.

Remote visiting. We continue to see legal telephone calls and VTCs that were never placed, including at least ten calls yesterday. There is often no explanation given.

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We thank the Court for its attention to these important issues.

Respectfully submitted,

/s/ Sean Hecker
Sean Hecker

KAPLAN HECKER & FINK LLP

3

cc: Counsel of Record (by ECF)
Hon. Loretta Lynch, Paul, Weiss, Rifkind, Wharton & Garrison LLP (by e-mail)
Roberto Finzi, Paul, Weiss, Rifkind, Wharton & Garrison LLP (by e-mail)
Tatiana Laing, Paul, Weiss, Rifkind, Wharton & Garrison LLP (by e-mail)
Jeffrey Oestericher, U.S. Attorney's Office (S.D.N.Y.) (by e-mail)